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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1934.

No. 142

NOAH STEWART, *Appellant,*

vs.

ROBERT KEYES, *ET AL., Appellees.*

REPLY BRIEF *of* APPELLANT.

General Statement.

The purpose of this brief is to discuss Proposition II of the appellees, that the guardian's deed involved in this case was and is valid.

It is the contention of appellant that this deed was void on grounds of federal law because the land could not be conveyed by a guardian, for the purpose for which it was sold, without restrictions on alienation having been removed.

It is the further contention that if under federal law the land could be sold by a valid guardianship sale, then the sale was absolutely void under the laws of Oklahoma on four different grounds, as follows:

That the statutory right of the ward to nominate his guardian was disregarded.

That the mandatory provisions of the statute governing the matter of adjudging Noah Stewart incompetent and appointing a guardian for him were not complied with in that no verified petition was filed, in that five days' notice of hearing was not given, and in that the guardian for him as an incompetent neither took the oath nor gave the statutory bond.

That Rule V of the Supreme Court of Oklahoma, which had the force of law, was disregarded in the sale proceedings in that the ward was not present in court when the order for sale was made and was not examined as to the necessity for the sale and no transcript of the testimony taken at the hearing was filed.

That the land was sold without appraisement and the real sale was in Hughes County while the land sold was in Seminole County, Oklahoma.

Before taking up these propositions attention is called to the fact that *Joines* v. *Patterson,* 274 U. S. 544, which is relied upon by appellees, only held the following:

> "Under the settled construction given to the seven-year statute of limitations by the courts of Arkansas, it began to run against Patterson when Joines took possession."

The opinion also discloses that Patterson was a white man and was not of Indian blood.

I.

The guardian's sale was absolutely void for the reason there is no statute of the United States which authorizes a guardian of an incompetent full-blood Indian to sell his restricted land where the restrictions on the alienation of such land have not been removed by the Secretary of the

Interior. The Acts of Congress putting in force in the Indian Territory the probate laws of Arkansas did not give a right to a guardian of an incompetent to sell restricted Indian land. But even if such Acts of Congress did give such right of sale, still the guardian's sale involved in this case, was absolutely void for the reason that under the Arkansas law a guardian could not be appointed for one who was not of unsound mind and a guardian of an incompetent could not sell the land of his ward to obtain money to improve other land of his ward.

The following stipulation was made:

> "It is hereby stipulated and agreed by and between the parties hereto, that the restrictions on the allotment of Lizzie Toney have never been removed by the Secretary of the Interior as provided for by Acts of Congress as relative to said action, and that the restrictions on the allotment of Noah Stewart had never been removed as provided for." (R. 19)

The federal question which has to be decided in determining whether the guardian's sale of this land from which the restrictions on the sale had never been removed was valid, is whether the probate court of Oklahoma had jurisdiction to decree a sale of the land of one adjudged incompetent under the Oklahoma statute,

> "for the purpose of proper maintenance and support of said ward, and for the further purpose of applying the proceeds of said sale to the improvement of the allotment of said ward, * * *."

The federal statutes relating to incompetent Indians are collected in the appendix to the brief of the appellees. None of them purport to give a guardian the right to sell such lands. On the other hand they do purport to give guardians of minors the right to sell their lands. The statutes set out in the appendix to the brief of appellees recog-

nize the right of guardians of incompetent Indians to do certain specific things including the making of leases upon the land of their wards. The statutes of the United States contain no provision which expressly or by reasonable inference could give the probate courts of Oklahoma authority to decree the sale by a guardian of the restricted land of an adult full-blood Indian, where the Secretary of the Interior has not made an order removing the restrictions on the alienation of the land.

There has been no need for such general right of sale.

The Oklahoma courts have always held that land inherited by adult full-blood Indians are not subject to taxation.

—*Marcy* v. *Board of Commissioners of Seminole County*, 45 Okl. 1, 144 Pac. 611;
Watkins v. *Howard*, 64 Okl. 166, 166 Pac. 706.

Ordinarily it would be for the best interest of the Indian to not sell the tax exempt property but to have the same leased and retain the income from the property. An exceptional case could be taken care of by having the Secretary of the Interior remove the restrictions from the alienation of the land.

The opinion in *Lytle* v. *Fulotka*, 106 Okl. 86, 263 Pac. 456, states that the probate courts of Oklahoma have jurisdiction to decree the sale of the inherited land of an adult incompetent full-blood Indian. In that case, however, the sale involved was held void. The statute which the court in that case thought gave authority for such sale is the Act of April 28, 1904, putting in force in the Indian Territory the probate laws of Arkansas as to Indians. This statute is quoted at page 72 of the brief of appellees.

By section 31 of the Act of May 2, 1880 (26 Stat. 81), the general laws of Arkansas, as contained in specified chapters of Mansfield's Digest, were made the local laws for Indian Territory. The statute is quoted at pages 70 to 71 of the brief of appellees. The Indians had their own tribal laws. The purpose of the Act of April 28th, 1904, was to put in force the probate laws of Arkansas as to Indians. It was not its purpose to remove restrictions on the alienation of Indian lands nor to give a right of alienation of restricted lands. Further legislation was deemed necessary to give the right to alienate inherited lands of minors. The enactment of such legislation was a legislative recognition of the fact that the Act of April 28th, 1904, did not give the probate courts the right to decree the sale of lands of minor Indians.

The opinion in *Lytle* v. *Fulotka*, without citing any cases, assumes that probate jurisdiction under the laws of Arkansas included the right to decree the sale of lands of an incompetent for *all* the reasons specified in the Oklahoma statutes. This assumption was not well founded.

The Supreme Court of Arkansas in *Storthz* v. *Sanger*, 108 Ark. 154, 156 S. W. 1020, in holding that a provision in a lease made by the guardian of an insane person giving the lessee an option to purchase was void although the lease was authorized by the probate court, said:

> "It is very clear that this was not within the jurisdiction of the probate court, which is confined with respect to the property of infants and insane persons, to such limits as are prescribed by the statute. In other words, the court possesses only such powers as the statute confers. This rule is stated by Judge EAKIN, in the case of *Myrick* v. *Jacks*, 33 Ark. 425, as follows: 'Courts of probate have, by the statute, been entrusted

with some limited powers over the estates of minors in the hands of administrators and guardians and within the scope of these statutory powers they are certainly entitled to all presumptions accorded to superior courts of record. But they had no such jurisdiction by common law, and beyond the limits given they have none now.' * * *

"This rule applies, of course, to orders with respect to the property of persons of unsound mind as it does to the property of the estates of decedents and of infants."

From May 2nd, 1890, to November 16, 1907, the local laws in force in the Indian Territory for the most part were the laws of Arkansas which were put in force by Acts of Congress. Under the laws of Arkansas a guardian could be appointed for a person as an incompetent only when the person was of *unsound* mind. Under the Oklahoma law which became effective on November 16, 1907, a guardian could be appointed for a person as an incompetent if he was "from any cause mentally incompetent to manage his property * * *." The Oklahoma statute is set out in the appendix.

In *Shelby* v. *Farve*, 33 Okl. 651, 126 Pac. 764, it was said:

"It is to be noted that the court found specifically that the parties for whom the guardian was sought were so ignorant in so far as the value of their property is concerned, that it was probable that they would make improvident disposition of the same."

It was held that this fact gave the court the right to appoint a guardian.

In the case of *In re Carney's Guardianship*, 110 Okl. 165, 237 Pac. 111, the following conclusion of law was approved:

"2. That one who is mentally normal but who, through lack of education and training is unable, unassisted, to properly manage and take care of himself or his property and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons, is incompetent."

The Arkansas law giving the right to appoint guardians for incompetents and defining their powers is chapter 82 of Mansfield Digest. Section 3767 provides:

"Probate courts, within their respective counties, shall have power and jurisdiction to appoint and possess a superintending control over, guardians to take the care, custody and management of idiots, lunatics, habitual drunkards and persons of unsound mind *(a)*, who are incapable of conducting their own affairs and their estates real and personal, and to provide for the safe keeping of such persons, the maintenance of themselves and their families, and the education of their children, in the manner hereinafter directed."

The note says, "(a) see Art. VII, Sec. 34, Const."

Said section of the Constitution provides:

"The judge of the County Court shall be the judge of the court of probate, and shall have such exclusive original jurisdiction in matters relative to * * * guardians and persons of unsound mind and their estates as is now vested in the Circuit Court, or may be hereafter prescribed by law."

Said chapter of Mansfield's Digest of the Statutes of Arkansas, which was put in force in the Indian Territory, contains no provision authorizing the sale of lands of a person of unsound mind for the purpose of obtaining money for the improvement of other land. See statutes in appendix.

Under the said provisions of Arkansas law a person must have been of unsound mind before a guardian could be appointed for him. Under the Oklahoma law such person need not be of unsound mind. Under said provisions of Arkansas law the land of a person of unsound mind under guardianship could not be sold to obtain money to improve other land. Under the Oklahoma law the land of a person under guardianship as an incompetent could be sold to obtain money to improve other land.

Since the Arkansas law was the local law governing guardianships when the word "incompetent" was used in statutes for the Indian Territory, it must be deemed to have the meaning it had under the Arkansas law, that is a person who was of unsound mind or a habitual drunkard. Under that law there was a general right in the guardian with the approval of the court to lease the land of his ward who was of unsound mind but the right to sell such land was very limited.

Appellant contends that under the various statutes putting in force the laws of Arkansas in the Indian Territory, a guardian of an incompetent had, with the approval of the probate court, the right to lease the land of his ward but did not have the right to sell such land; that the fact that the statutes affirmatively gave guardians of minors the right to sell lands of minor wards but did not give guardians of incompetents the right to sell lands of incompetent wards shows that guardians of incompetent wards had not been given the right to sell their lands. The statute which *Fulolka* v. *Lytle, supra,* states gave guardians of incompetent wards the right to sell their lands applied to minors also. Subsequent legislation was a recognition of the fact that

said statute did not give guardians of minor wards the right to sell their land.

Appellant further contends that the laws of Oklahoma governing the right to appoint a guardian for a person as an incompetent and the right of a guardian of an incompetent to sell his ward's land are so different from the laws of Arkansas which were put in force in the Indian Territory that, as to restricted Indian lands, after November 16, 1907, the laws of Oklahoma did not become effective because there was no Act of Congress putting such laws in effect as to lands of restricted Indians. Even assuming that the statement in *Fulotka* v. *Lytle* to the effect that the Act of April 28, 1904, did give the guardian of a person for whom a guardian could be appointed under the Arkansas law the right to sell the land of his ward for the reasons specified in the Arkansas law and that after the admission of Oklahoma as a state the probate laws of Arkansas which had been put in force in the Indian Territory continued in force and were to be administered by the probate courts of Oklahoma, was correct, still the sale in this case was absolutely void for under the Arkansas law there was no jurisdiction to appoint the guardian and under the Arkansas law there was no jurisdiction to sell the land for the purpose of obtaining money to improve other land of the ward.

II

Assuming the right to make the guardian's sale involved in this case existed, if made according to the Oklahoma law, the guardian's sale was absolutely void under the Oklahoma law on four different grounds.

The record as to the guardianship proceedings up to the guardian's sale is in substance as follows:

Noah Stewart was enrolled as a full-blood Creek Indian and as seven years of age on January 23, 1900 (R. 18b).

On July 20th, 1909, John A. Jacobs was appointed guardian of Noah Stewart, who was at that time 16 years of age.

On September 26th, 1910, there was filed a paper signed by Noah Stewart nominating Albert P. Stewart as his guardian.

On October 5th, 1910, John A. Jacobs filed his resignation as guardian.

On January 5th, 1914, an order was made by the County Court of Hughes County refusing to accept the resignation of John A. Jacobs and ordering,

> "that John A. Jacobs hereafter shall act for the said Noah Stewart, as guardian of Noah Stewart, incompetent, and shall be governed by the laws relating thereto."

On June 9th, 1918, the County Court of Hughes County made an order authorizing John A. Jacobs as guardian of the estate of Noah Stewart to sell at public sale an undivided one-half interest in Southwest Quarter of Section Four, Township 10 North, Range 8 East, Seminole County, Oklahoma.

There was no compliance with Rule 5 of the Supreme Court of Oklahoma then in force which required that the ward when over 18 years of age must be present and must be examined as to the necessity for said sale and the truth of the allegations of the petition. The order made recites the appearances but does not show Noah Stewart was present.

An order confirming a sale to Robert Keyes for $675 was made on July 11th, 1916. This order shows that the actual sale was made in Hughes County, Oklahoma, at which place Robert Keyes, who had bid $600 at the sale had in Seminole County, made a new bid of $675,

"which said bid is accepted by the court and the guardian."

Among the defects in the proceeding were the following:

Since Noah Stewart was over 14 years of age, he had a statutory right to nominate a suitable person as his guardian. He nominated Albert P. Stewart. The County Court was required to appoint Albert P. Stewart as the guardian of Noah Stewart, a minor, for the County Court made no finding that the nominee of the minor was not a proper and suitable person to be guardian.

There was no compliance with the mandatory and jurisdictional requirements of the Oklahoma statutes in proceedings for the appointment of a guardian of an incompetent in that there was no verified petition alleging incompetency, there was not five days' notice of hearing and no oath was taken by the purported guardian and no bond was given.

In the hearing for the sale of the land of Noah Stewart, Rule V of the Supreme Court of Oklahoma was disregarded.

The land was sold without appraisement and the real sale was in Hughes County while the land was in Seminole County.

(1) ***The Oklahoma statutes permit a ward over the age of 14 to nominate his own guardian. The nominee of the ward in this case was not appointed and was not found to be unsuitable for appointment.***

The syllabus to *Given* v. *Pollock*, 96 Okl. 25, 219 Pac. 898, reads:

> "Where a minor who has attained the age of fourteen years appoints his own guardian under section 6529, Rev. Laws 1910, such appointment is subject to the approval of the county judge, but the only discretion which can be exercised by the county judge is as to whether the nominee is a suitable and competent person and resides in the state; and, unless the nominee was unsuitable and incompetent or a non-resident of the state it was error to refuse to approve the nominee."

The statute (section 1425, O. S. 1931) provides:

> "If the minor is under the age of fourteen years, the county judge may nominate and appoint his own guardian, who, if approved by the judge, must be appointed accordingly."

It was held in *Coker* v. *Moore*, 121 Okl. 219, 249 Pac. 694, that a sale of land made by a guardian who had been appointed in violation of this statute, was absolutely void.

It was held in *Re Guardianship of Baptiste*, 114 Okl. 116, 243 Pac. 938, that the statutes providing for the appointment of guardians are mandatory and must be sub-

stantially complied with in order to give the court jurisdiction to make the appointments.

In Oklahoma county judges hold office for only two years, unless re-elected. Guardianships are regarded as political patronage. Therefore, statutes should be construed so as to give wards the right to select their guardians and to prevent, as far as possible, guardians who are objectionable to wards from being named because they are a part of the political machine of a county judge.

(2) ***The order declaring Noah Stewart an incompetent and providing that John A. Jacobs should act for him as guardian of Noah Stewart, incompetent, was void for the reason the proceedings were not in compliance with the mandatory, jurisdictional requirements of the Oklahoma statutes and were void.***

The Oklahoma statutes are set forth in the appendix. There was no verified petition alleging incompetency. There was no five days' notice of hearing. John A. Jacobs neither took the oath nor filed a bond as guardian of Noah Stewart, an incompetent. No letters of guardianship were issued to him as such guardian. His sole authority to act as such guardian was based on a mere court order directing him to so act.

In *Tiger* v. *McCallom*, 89 Okl. 249, 214 Pac. 194, it was held that the verified petition is jurisdictional. The court, after quoting the statute, said:

> "This statute was construed in *Martin* v. *O'Reilly, County Judge*, 81 Okl. 261, 200 Pac. 687, by this court, and held to be mandatory, and unless the provisions of said statute are complied with, the court is without jurisdiction to hear and determine such a proceeding."

In *Martin* v. *O'Reilly, supra,* the Oklahoma court cited approvingly the case of *McGee* v. *Hayes,* 127 Cal. 336, 59 Pac. 767, which said:

> "Respondent contends that the personal presence of the incompetent at the hearing cured any defects in the notice and that by his presence he consented to the order and waived notice, and that the order so shows on its face. The presence of the incompetent could not supply the requirement of the statute that he should be served with notice of the hearing."

The Oklahoma Supreme Court in the case of *In re Guardianship of Winnett,* 112 Okl. 43, 239 Pac. 603, held:

> "By virtue of section 1449, C. O. S. 1921, when a petition is filed in the County Court praying that a person be declared insane or from any cause mentally incompetent to manage his property, all proper parties to such proceedings must be given five days' notice of the time and place of hearing the application, and the court acquires no jurisdiction to hear the cause until the five days' notice provided for by the statute has elapsed."

In this case Noah Stewart was a full-blood Indian. The restrictions on the alienation of his land had never been removed by the Secretary of the Interior. Representatives of the Interior Department were entitled to be represented in any proceedings for the appointment of a guardian for him as an incompetent.

—*Buell* v. *McKinney,* 113 Okl. 92, 239 Pac. 467;
In re Hickory's Guardianship, 75 Okl. 79, 182 Pac. 233.

Reasons of public policy require that the statutory requirements be held jurisdictional. The appointment of a guardian deprives a person of all right to contract. It deprives him of the right to contract to pay an attorney to

represent him. Therefore, he should have reasonable opportunity to prepare for hearing in a proceeding which may deprive him of the right to manage his own property. If he be in fact incompetent then those interested in his well being should have reasonable opportunity to be heard so as to prevent an unfit person from being appointed his guardian and so as to secure the giving of a proper bond. Here no bond at all was given.

Appellees cite as sustaining the procedure following in this case, the case of *Mullen* v. *Glass, et al.*, 43 Okl. 549, 143 Pac. 679. That case materially differs from this case. That case involved the lease of land and not the sale of land. The guardian who had been appointed was appointed by the United States Court for the Central District of Indian Territory. The opinion states:

> "* * * at the same time appeared Solomon Harris in person, together with his adult brothers and their attorney, and the court then found that Solomon Harris was an *imbecile* and incompetent to transact his own affairs, and that it would not be for the best interest of said Solomon Harris to discharge his guardian."

These facts show that the relatives of an imbecile were present at the hearing and were represented by an attorney. There must have been some prior notice to cause them to come to court. Such were not the facts in this case.

It is true as held in that case that the guardianship of a minor incompetent does not terminate by operation of law upon such minor attaining majority.

Under the Oklahoma law proceedings for adjudging a minor incompetent may be had and a guardian may be appointed for a minor as an incompetent. *Johnston* v. *Guy*, 165 Okl. 156, 25 P. (2d) 625.

In this case the original appointment of the guardian was solely on the ground of minority of the ward. It was not based on the additional ground of incompetency. Therefore the powers of the guardian terminated at the time the ward became of age.

Mullen v. *Glass, supra,* does not decide the questions involved in this case. The law governing this case is to be found in the California decisions construing the California statute, governing guardianship of incompetents, which was adopted by Oklahoma and in the Oklahoma cases construing the statute after its adoption.

Under these decisions a verified petition alleging incompetency is jurisdictional and five days' notice of hearing must be given or there is no jurisdiction to proceed to appoint a guardian.

Under the Oklahoma law the right of a man to manage his own property cannot be taken away through incompetency proceedings unless he be given reasonable opportunity to prepare for a hearing upon the matter of his competency. Since the proceedings are of statutory origin, there is no jurisdiction to proceed if the requirements of the statutes are not followed.

(3) *There was a failure to comply with Rule Number V governing procedure in probate matters effective July 15, 1914, and the sale was therefore void.*

In Oklahoma the county judge holds the probate court. He is elected for a two-year term. After Oklahoma was admitted as a state the county judges in many cases failed to protect the estates of those under guardianship. To afford additional protection to wards the Supreme Court of Oklahoma on June 11th, 1914, adopted rules of procedure

in probate matters which became effective July 15th, 1914, placing restrictions on the sale and leasing of lands of persons under guardianship. These rules are printed in 47 Oklahoma XIV to XVII.

Rule V provides:

> "Petitions for the sale of land of minors and incompetents will be heard * * * of each * * *. On the hearing of petitions for sale, the guardian, person in custody, and the ward himself, when over fourteen years of age, must be present and must be examined as to the necessity of said sale and the truth of the allegations of the petition, and furnish such additional evidence as the court may require. The evidence offered must be taken down and transcribed and a copy thereof filed with the papers in the case."

The evidence showed the ward was not in court when the petition for sale was heard and that no transcript of the testimony was filed. The order made recites the appearance of the guardian only.

The Supreme Court of Oklahoma has many times passed upon the effect of the failure to comply with Rule IX of said rules of probate procedure and has held that a lease made by a guardian and approved by the probate court is absolutely void where Rule IX has been disregarded.

In *Winona Oil Company* v. *Barnes*, 83 Okl. 248, 200 Pac. 981, it was held:

> "The rule of this court promulgated June 11, 1914 (47 Okl. XIV), relating to procedure of County Courts in probate matters, has the force and effect of law, and is binding upon the court as well as upon the parties to the action and cannot be dispensed with to suit the circumstances in any particular case."

This doctrine was reaffirmed in *Garfield Oil Co.* v. *Crews*, 134 Okl. 229, 273 Pac. 228, which cites many of the earlier cases.

In principle there can be no distinction between Rule IX and Rule V of the same rules governing probate procedure. Rule V is mentioned in *Manuel* v. *Kidd*, 126 Okl. 70, at 78, 258 Pac. 915, where the order made recited the appearance of the minor. Rule V is also mentioned in *Given* v. *Jones*, 158 Okl. 124, at 127, 12 P. (2d) 892, where it was held that the right to attack the sale because of failure to comply with Rule V was barred by the statute of limitations.

(4) ***The guardian's deed was void because the land was in Seminole County, Oklahoma, there was no appraisement of the land and the actual sale was in Hughes County, Oklahoma.***

The applicable statutes are the following portions of sections of Oklahoma Revised Laws of 1910:

> "*6382.* Sales at public auction must be made in the county where the land is situated. * * *"
>
> "*6384.* No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real estate has been appraised within one year of the time of such sale."

In this case the order of confirmation recites:

> "That upon the hearing of said return of sale the said purchaser, Robert Keyes, raised his bid to the sum of $675.00, which *said bid is accepted by the court and by the guardian.*"

This shows that the bid which was accepted was made in Hughes County. The Oklahoma Supreme Court has uni-

formly held that where land of a minor is sold without appraisement and the sale is not had at public auction in the county where the land is situated, the guardian's deed is absolutely void.

—*Oklahoma Portland Cement Co.* v. *Winters*, 77 Okl. 36, 186 Pac. 468;
Winters v. *Oklahoma Portland Cement Co.*, 65 Okl. 132, 164 Pac. 965;
Glory v. *Bagby*, 79 Okl. 155, 188 Pac. 881;
Sampson v. *Smith*, 64 Okl. 102, 166 Pac. 422;
Littlehead v. *Shepard*, 123 Okl. 29, 251 Pac. 60;
Pritchett v. *Walters*, 111 Okl. 33, 238 Pac. 487;
Nut-Te-Che Lewis v. *Ward*, 101 Okl. 146, 223 Pac. 839;
Abraham v. *Lozier*, 110 Okl. 221, 237 Pac. 85;
Pritchett v. *Jenkins*, 111 Okl. 30, 238 Pac. 487.

It is true that appellant's petition did not contend that the guardian's sale was void on the 4th ground here argued. But the petition did set out the facts making it void on such ground. Appellant was a person under disability. In *Patterson* v. *Carter*, 83 Okl. 70, at 73, it was said:

> "It must not be forgotten that these restricted Indians do not become *sui juris* on reaching their majority."

In Oklahoma the rule prevails that the court on its own motion should protect the rights of persons who are under disability.

—*In re Sanders' Estate*, 67 Okl. 3, 168 Pac. 197;
Tiuna v. *Willmott, et al.*, 162 Okl. 42.

The evidence that the sale was void on said ground was admitted without objection. It is also the rule in Okla-

homa that in such case the pleadings will be deemed amended to conform to the evidence admitted without objection. —*Harn* v. *Patterson*, 58 Okl. 694, at 707.

Respectfully submitted,

WILLIAM NEFF,
Counsel for Appellant.

APPENDIX.

Provisions of Oklahoma Revised Laws of 1910.

6538. *Petitions for Guardians of Incompetent or Insane Persons.* When it is represented to the County Court upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge must cause notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing.

6539. *Guardian Appointed, When.* If after a full hearing and examination upon such petition, it appears to the judge of the County Court that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this article (chapter) specified.

6540. *Bond and Powers of Guardian.* Every guardian appointed as provided in the preceding section, has the care and custody of the person of his ward, and the management of all his estate, until such guardian is legally discharged, and he must give bond to such ward, in like manner and with like conditions, as before prescribed with respect to the guardian of a minor.

Sections of Mansfield's Digest of Statutes of Arkansas.

Sec. 3784. The court by which any insane person is committed to guardianship may make orders for the restraint, support and safekeeping of such person; for the management of his estate and the support and maintenance of his family and education of his children out of the proceeds of his estate; to set apart and reserve for the use of such family any property, real or personal, not necessary to be sold for the payment of debts; and to let, sell or mortgage any part of such estate, real or personal, when neces-

sary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

Sec. 3796. The land of a person of unsound mind may be sold by the order of the probate court, though not necessary for the payment of his debts, or for his maintenance, where it shall appear:

First. That the person of unsound mind has a wife or children.

Second. That this unsoundness of mind is confirmed and incurable.

Third. That his estate is more than sufficient to pay his debts and maintain him.

Fourth. That the sale will be beneficial to his estate, and prospectively beneficial to his wife and children.

Fifth. That his wife and children, being made parties to the proceeding in proper person, if of full age, or by their guardians if infants, consent to such sale as beneficial to them by their answers, sworn to by their guardians.